

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JUNE THEPSOMBANDITH,

Petitioner,

Civil No. 07-2248 BEN (RBB)

v.
V.M. ALMAGER, Warden,

Respondent.

**ORDER REOPENING CASE AND
SETTING BRIEFING SCHEDULE**

On November 27, 2007, Petitioner, proceeding pro se, submitted a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254.

In its December 3, 2007, December 10, 2007, February 11, 2008, and May 20, 2008 Orders, the Court dismissed this case without prejudice because Petitioner failed to satisfy the filing fee requirement. In the Court's May 30, 2008 Order, Petitioner was instructed that to have this case reopened he had to pay the \$.500 filing fee no later than June 30, 2008. (*See* doc. no. 9.)

On July 1, 2008, Petitioner filed a Petition in this Court and paid the \$5.00 filing fee. The Clerk's Office assigned the matter case number 08cv1172 JLS (PCL). Subsequently, it came

1 to the Court's attention that Petitioner was attempting to comply with the Court's May 30, 2008
 2 dismissal Order in case number 07cv2248 BEN (RBB) and not to file a new petition.
 3 Accordingly, on July 31, 2008, the Court directed that case number 08cv1172 JLS (PCL) be
 4 dismissed as duplicative of case number 07cv2248 BEN (RBB), that the \$5.00 filing fee
 5 Petitioner paid in case number 08cv1172 JLS (PCL) be applied to case number 07cv2248 BEN
 6 (RBB) and that case number 07cv2248 BEN (RBB) be reopened. (*See* Order dated July 31,
 7 2008 in case number 08cv1172 JLS (PCL) [doc. No. 2]).

8 Accordingly, based on this Court's review of the Petition, and in accordance with Rule
 9 4 of the rules governing petitions for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, **IT**
 10 **IS ORDERED** that:

11 1. The Clerk of this Court shall promptly (a) serve a copy of the Petition and a copy
 12 of this Order on the Attorney General for the State of California, or his authorized agent; and
 13 (b) serve a copy of this Order on Petitioner.

14 2. If Respondent contends the Petition can be decided without the Court's reaching
 15 the merits of Petitioner's claims (e.g., because Respondent contends Petitioner has failed to
 16 exhaust any state remedies as to any ground for relief alleged in the Petition, or that the Petition
 17 is barred by the statute of limitations, or that the Petition is subject to dismissal under Rule 9 of
 18 the Rules Governing § 2254 Cases, or that all of the claims are procedurally defaulted, or that
 19 Petitioner is not in custody), Respondent shall file a motion to dismiss pursuant to Rule 4 of the
 20 Rules Governing § 2254 Cases no later than **September 22, 2008**. The motion to dismiss shall
 21 not address the merits of Petitioner's claims, but rather shall address all grounds upon which
 22 Respondent contends dismissal without reaching the merits of Petitioner's claims is warranted.¹
 23 At the time the motion to dismiss is filed, Respondent shall lodge with the Court all records
 24 bearing on Respondent's contention in this regard. A hearing date is not required for the motion
 25 to dismiss.

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¹ If Respondent contends Petitioner has failed to exhaust any state remedies as to any ground for relief alleged in the Petition, the motion to dismiss shall also specify the state remedies still available to Petitioner.

1 3. If Respondent files a motion to dismiss, Petitioner shall file his opposition, if any,
 2 to the motion no later than **October 22, 2008**. At the time the opposition is filed, Petitioner shall
 3 lodge with the Court any records not lodged by Respondent which Petitioner believes may be
 4 relevant to the Court's determination of the motion.

5 4. Unless the Court orders otherwise, Respondent shall not file a reply to Petitioner's
 6 opposition to a motion to dismiss. If the motion is denied, the Court will afford Respondent
 7 adequate time to respond to Petitioner's claims on the merits.

8 5. If Respondent does not contend that the Petition can be decided without the Court
 9 reaching the merits of Petitioner's claims, Respondent shall file and serve an answer to the
 10 Petition, as well as points and authorities in support of such answer, no later than **October 6,**
 11 **2008**. At the time the answer is filed, Respondent shall lodge with the Court all records bearing
 12 on the merits of Petitioner's claims. The lodgments shall be accompanied by a notice of
 13 lodgment which shall be captioned "**Notice of Lodgment in 28 U.S.C. § 2254 Habeas Corpus**
 14 **Case — To Be Sent to Clerk's Office**." Respondent shall not combine separate pleadings,
 15 orders or other items into a combined lodgment entry. Each item shall be numbered separately
 16 and sequentially.

17 6. Petitioner may file a traverse to matters raised in the answer no later than
 18 **November 5, 2008**. Any traverse by Petitioner (a) shall state whether Petitioner admits or
 19 denies each allegation of fact contained in the answer; (b) shall be limited to facts or arguments
 20 responsive to matters raised in the answer; and (c) shall not raise new grounds for relief that
 21 were not asserted in the Petition. Grounds for relief withheld until the traverse will not be
 22 considered. No traverse shall exceed ten (10) pages in length absent advance leave of Court for
 23 good cause shown.

24 7. A request by a party for an extension of time within which to file any of the
 25 pleadings required by this Order should be made in advance of the due date of the pleading, and
 26 the Court will grant such a request only upon a showing of good cause. Any such request shall
 27 be accompanied by a declaration under penalty of perjury explaining why an extension of time
 28 is necessary.

1 8. Unless otherwise ordered by the Court, this case shall be deemed submitted on the
2 day following the date Petitioner's opposition to a motion to dismiss and/or his traverse is due.

3 9. Every document delivered to the Court must include a certificate of service
4 attesting that a copy of such document was served on opposing counsel (or on the opposing
5 party, if such party is not represented by counsel). Any document delivered to the Court without
6 a certificate of service will be returned to the submitting party and disregarded by the Court.

7 10. Petitioner shall immediately notify the Court and counsel for Respondent of any
8 change of Petitioner's address. If Petitioner fails to keep the Court informed of where Petitioner
9 may be contacted, this action will be subject to dismissal for failure to prosecute.

IT IS SO ORDERED.

1 | DATED: August 4, 2008

Ruben Brooks

Ruben B. Brooks
United States Magistrate Judge